

1 STATE OF WISCONSIN CIRCUIT COURT OUTAGAMIE COUNTY

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3 STATE OF WISCONSIN,

4 v. Plaintiff,  
5 CHONG LEN LEE,

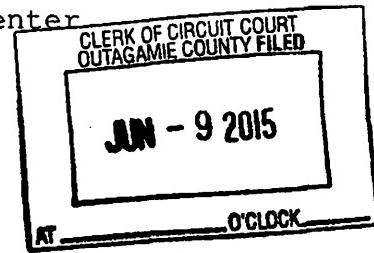
6 Defendant.

Case No. 13-CF-1074

**ORIGINAL**

7 MOTION HEARING  
8 \_\_\_\_\_

9 BEFORE: HONORABLE GREGORY B. GILL, JR.  
10 Circuit Court Judge, Branch IV  
11 Outagamie County Justice Center  
12 Appleton, WI 54911



13 DATE: May 26, 2015

14 APPEARANCES: CARRIE SCHNEIDER  
15 District Attorney  
Appearing on behalf of the State

16 ANDREW MAIER and PETER HAHN  
17 Assistant District Attorneys  
Appearing on behalf of the State

18 DEBORAH VISHNY and EVAN WEITZ  
19 Attorneys at Law  
Appearing on behalf of the Defendant

20 CHONG LEN LEE  
21 Defendant  
Appearing in person

22  
23  
24 Joan Biese  
25 Official Reporter, Branch IV  
Outagamie County

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1 components of this case, correct?

2 A Yes.

3 Q But you don't recall any discussions with myself or  
4 other prosecutors related to saying, yes, go ahead  
5 and get rid of those prior recordings.

6 A No. I think that was a decision that was made with  
7 the investigators that were working on the case as to  
8 what do we do with this information, and we related  
9 to the Monfils Law, and that we believe that if there  
10 were any of those recordings, photographs or any  
11 submissions like that, we knew through discovery the  
12 defense would be able to obtain that, so I think as  
13 an investigative team we just decided that nothing  
14 would be retained.

15 ATTORNEY SCHNEIDER: I have nothing else,  
16 Judge, at this time.

17 THE COURT: Attorney Vishny.

18 ATTORNEY VISHNY: Yeah. I have a few more  
19 questions.

20 EXAMINATION

21 BY ATTORNEY VISHNY:

22 Q First of all, outside of these three witnesses, Mr.  
23 Thao, Mr. Thao and Mr. Lee, are there any other  
24 witnesses who exist in this case who do not want to  
25 be identified or simply who were interviewed by the

1       police that have not been disclosed to the State or  
2       the defense?

3   A   Yes.

4   Q   How many?

5   A   Well, there was about 150 people at the bar that we  
6       interviewed. Some of those identities -- I believe  
7       most of those identities you have, but the full  
8       interviews as far as what was discussed during those  
9       interviews was not retained, whether it was recorded  
10      or notes taken from that or a report completed on  
11      that. In addition to that, I know of two other  
12      individuals -- I recall two other individuals who I  
13      was part of -- I interviewed that had requested not  
14      to be identified under the same concerns about their  
15      own personal safety in reference to this case.

16   Q   Okay. What are the name of those individuals?

17   A   I don't recall or don't remember right now.

18   Q   So if we took a ten-minute break and you ran back to  
19      your office you could retrieve that, correct?

20   A   I don't know if I have anything from those  
21      interviews.

22   Q   Well did you reinterview those people in April of  
23      2015 as well?

24   A   No, I did not.

25   Q   Why not?

1       in order to do a full impeachment, I simply can't  
2       prove it today.

3                     ATTORNEY SCHNEIDER: I would dispute  
4       because I know we specifically talked yesterday  
5       about, and I told her Sergeant Thao had not talked to  
6       Jack Thao, there was this counterfeit grocery store  
7       thing with his parents.

8                     ATTORNEY VISHNY: Correct.

9                     ATTORNEY SCHNEIDER: So I don't know why  
10      she says she's surprised by Sergeant Thao's  
11      testimony.

12                  THE COURT: I think now we're talking about  
13      Paul Lee.

14                  ATTORNEY VISHNY: I'm not surprised about  
15      the testimony about Jack Thao at all. I wasn't  
16      surprised, it's exactly what I expected. But this  
17      other stuff about interviewing Ryan, Mikey, Watou,  
18      and, you know, I --

19                  ATTORNEY SCHNEIDER: Well, it -- maybe I'll  
20      say this. My point of today was having him further  
21      express their fears and his basis and his knowledge.  
22      If we're going to argue over the dates and when they  
23      interviewed them and in what order, I want to -- I  
24      guess I'd object because her cross is beyond the  
25      scope. I don't know what she's trying to get to

1           through cross, but the purpose of why I recalled him  
2           on that was my thought that I needed to further  
3           express to the court his belief when it goes to the  
4           argument on bad faith.

5                         ATTORNEY VISHNY: Let me try a few more  
6           questions, maybe I can handle this without the  
7           impeachment material.

8     Q     (BY ATTORNEY VISHNY) Let's talk first about Ryan.  
9           We're going to talk about each one specifically.  
10          Okay?

11     A     Yes.

12     Q     Focusing on Ryan, what did Ryan tell you the shooter  
13          wore in that interview?

14     A     He -- he did describe the person coming from which  
15          directions and a description of the clothing, and  
16          you're asking me to describe specifically what color  
17          in terms of -- I can't -- I don't have --

18     Q     Because you don't remember, right?

19     A     Correct.

20     Q     And you can't refer to any notes because you've  
21          destroyed the reports?

22     A     It was decided not to retain, yes.

23     Q     And you didn't show him any photographs at the time  
24          at that interview, or did you?

25     A     I don't recall showing photograph to him.

1 Q Paul Lee was a suspect at that time, the main suspect  
2 of the Appleton Police Department investigation,  
3 correct?

4 A I'm telling you in my mind --

5 Q I'm not asking about your mind, I'm asking about what  
6 the suspect was that the team was working to develop,  
7 it was Paul Lee, wasn't it?

8 A No. At the time it was not in my mind that Paul Lee  
9 was the suspect.

10 Q It was in your mind that somebody else was?

11 A No. It's an open investigation to determine who have  
12 done the shooting.

13 Q When Ryan Lee told you he was afraid of people in the  
14 Lee family, he didn't even mention Chong Lee's name  
15 during that interview on December 10th or 11th,  
16 whichever day it occurred, he didn't even mention  
17 Chong Lee's name to you.

18 A Right. His name is Ryan Thao. He did not.

19 Q Excuse me. He did not mention Chong Lee, we're  
20 absolutely clear about that, correct?

21 A No, he did not mention.

22 Q The person he mentioned being afraid of was Paul  
23 Lee?

24 A I don't recall he mentioned Paul Lee, but he  
25 expressed concern about the brothers, the family,

1 because he's familiar with them.

2 Q He told you he knew Paul Lee, right? That's who he  
3 was familiar with, right?

4 A I recall -- believe that, but the person that we  
5 actually have a better relationship or knowledge or  
6 interaction was Mikey Thao, that he --

7 Q I'm asking you about Ryan. We're sticking to Ryan.  
8 Okay?

9 A I don't recall him saying Paul Lee that he knew, I  
10 don't recall that.

11 Q Okay. So if he talked about the Lee brothers,  
12 though, we are 100 percent positive the name Chong  
13 Lee never came up, correct?

14 A From Ryan Thao, no.

15 Q No. And he didn't even know Chong Lee, you found out  
16 later when you reinterviewed him, right?

17 A Correct.

18 Q So now that we established the name Chong Lee was in  
19 no way involved in the Ryan Thao discussion, let's  
20 talk about Mikey Thao. Mikey Thao also did not  
21 mention Chong Lee as somebody he was specifically  
22 afraid of, correct?

23 A Not names but just association with brothers.

24 Q Did he name specifically any specific brothers?

25 A That he's aware of all of them.

1 Q Did he name names?

2 A I didn't -- I don't recall exactly names, but he  
3 mentioned that he's familiar with Paul Lee.

4 Q Okay. Did he tell you what his description of the  
5 shooter's clothing was?

6 A Yeah, he did provide a description.

7 Q What did he tell you it was at the time?

8 A Again, I don't recall, but it was more of a jacket  
9 and some type of two-tone color or different color,  
10 and I can't give you precisely the color that he  
11 described.

12 Q And of course you can't remember because you didn't  
13 write it down.

14 A It was decided not to retain, yes.

15 Q And you didn't retain the tapes, right?

16 A Right.

17 Q And clearly this was the most important thing of this  
18 investigation was to get a description of who did the  
19 shooting when you're talking to these witnesses a few  
20 days before it -- after it occurred, excuse me.

21 A Taking into consideration the express for their  
22 safety, we decided not to retain the tape.

23 Q I didn't ask you that. What I asked you was, clearly  
24 the focus of the investigation, whether it's two,  
25 three, four days after this shooting, is to find out

1 who did it, right?

2 A Correct.

3 Q A description would be a crucial thing to find out,

4 correct?

5 A Correct.

6 Q Clothing would be a crucial thing, right?

7 A Yes.

8 Q Height and weight would be a crucial thing, right?

9 A Correct.

10 Q Showing photos could be a crucial thing, correct?

11 A Yes.

12 Q And you didn't show him any photographs either during

13 that?

14 A I don't recall showing photo.

15 Q Okay. And he didn't specifically ever mention Chong

16 Lee as somebody he was afraid of?

17 A Again, I did not give names other than have been

18 expressed concern, so the answer to your question

19 would be no.

20 Q All right. Watou Lee. He didn't know Chong Lee

21 either, right?

22 A No, he did not.

23 Q Chong Lee's name never came up in the interview,

24 correct?

25 A Yes.

1 Q Did you ask him for a description of what the shooter  
2 wore?

3 A Yes.

4 Q Height and weight?

5 A Yes.

6 Q You destroyed the tapes, right?

7 A Correct.

8 Q You knew at the time what other witnesses had told  
9 the police in terms of descriptions of the shooter,  
10 right?

11 A Yes.

12 Q In fact one of the most crucial witnesses was Daniel  
13 Kersten who was the bouncer. You weren't aware of  
14 any of his statements?

15 A No.

16 Q Or any of the other witness statements as to what the  
17 shooter wore?

18 A No.

19 Q You were just aware that the police believed that  
20 Paul Lee had a gun in his hand as he was fleeing  
21 Luna?

22 A It was expressed to me in that fashion, that he may  
23 have something in his hand similar to a gun.

24 Q And when Watou Lee said he was afraid of people in  
25 the Lee family, did he specifically mention Paul

1           Lee's name?

2   A   Watou, he did not know the brothers.

3   Q   Then how could he have said he was afraid of the Lee

4           brothers if he didn't know them?

5   A   Just through his socialization with Mikey Thao and

6           with Ryan Thao and the fact that he's aware of the

7           gang or the association with friends in that group.

8   Q   Now, you said that you're aware of prior violent acts

9           by what I characterize as the Lee brothers, correct?

10   A   Yes.

11   Q   Actually, the prior violent acts you were aware of

12           were those of Paul Lee.

13   A   No, his other brothers too.

14   Q   But it wasn't Chong Lee.

15   A   Not -- he was a victim of a shooting.

16   Q   Chong, yes, well, being a victim is not considered to

17           be a violent act by the Appleton Police Department,

18           is it?

19   A   Depending on what circumstance that caused it, but to

20           answer your question, I would say no.

21   Q   Okay. So aside from Chong Lee being a victim, you

22           weren't aware of him being involved in any other

23           incidents that were violent that you're describing

24           when you say that you were certainly aware these were

25           legitimate concerns, correct?

1 Q He was physically located in a spot that was much  
2 closer to the shooting, possibly, than Alyson Blom,  
3 so it was decided that it was worth protecting him  
4 but not Alyson Blom because of who had walked into  
5 the bar at the same time? Is that what you're  
6 saying?

7 A I'm saying that my recollection is Alyson was with  
8 the -- this group of people during the course of the  
9 evening, and not just, essentially, a bystander there  
10 in the lobby prior to the shooting, and I think we  
11 may have looked or viewed her just a little bit  
12 differently because she had more information in terms  
13 of the entire evening.

14 Q You mean in terms of who was where before walking  
15 into the Luna bar?

16 A Everything that happened that night. And just, I  
17 think, a closer affiliation with Mr. Lee.

18 Q You were aware that -- and the police had in fact  
19 recorded a phone call between a lady named Delinda,  
20 D-E-L-I-N-D-A, Guzman, G-U-Z-M-A-N, and Alyson Blom  
21 where Alyson Blom had clearly stated, not knowing  
22 that she was being recorded, that she had not seen  
23 the shooting, didn't know who did it, and that she  
24 expressed in one way or another some fear about  
25 getting involved. Correct?

1 A I don't remember that specifically, but if I'm not  
2 mistaken, I believe Alyson Blom -- and I haven't  
3 reviewed the report so I hope I'm not misspoken here,  
4 but I believe that she had some communication even  
5 that night after the shooting with Chong Lee's  
6 brother Hu Lee over in Little Chute or, actually, I  
7 think he was at work, but had some communication with  
8 either Hu or Hu's wife following the shooting.

9 Q Correct. But even though you knew from a recorded  
10 conversation that she had not seen the shooting and  
11 didn't know who the shooting (sic) was, she was  
12 interviewed and in fact threatened possibly with the  
13 loss of her job if she didn't say who was involved in  
14 this case, right?

15 A I don't recall her being threatened. I don't recall  
16 that being a loss of her job. But again, I guess my  
17 point just being that I think that her interaction  
18 with this group of guys, including Mr. Chong Lee, was  
19 much, much larger than the other guys that were just  
20 standing in the lobby that night. In fact, I  
21 remember at least two of those guys, I think, that  
22 were in the lobby that night that you had mentioned  
23 here talking about being concerned about Chong and  
24 these others showing up there and not even wanting to  
25 be there at the time because they were not affiliated

1       with that gang. And they were concerned for their  
2       safety, I guess, to some degree even at that point  
3       when they were just in the lobby of the -- of the  
4       Luna Lounge, as opposed to Alyson, for example, who  
5       was with them this entire time and follows through  
6       with going and talking to Hu Lee's wife and so  
7       forth.

8       Q     Okay. So, essentially, I understand your  
9       explanation, but ultimately the Appleton Police  
10      Department decided to pick and choose which witnesses  
11      were and were not going to be disclosed to the  
12      District Attorney, correct?

13      A     I guess I can -- to some degree that was the case  
14      here, but these were the only people that I'm aware  
15      of that weren't -- that were spoken to that were not  
16      put in report form.

17      Q     I see. Were you aware that Watou Lee did not  
18      identify Chong Lee as the shooter and that this might  
19      perhaps be information that's exculpatory and  
20      therefore there was going to be a duty on the part of  
21      the State to turn that over to the defense?

22      A     I don't recall that specifically.

23      Q     Were you aware that Mikey Thao said that he could not  
24      identify Chong Lee as being the shooter and  
25      therefore, as close as he was, that this was

1       exculpatory and there could be a duty to turn this  
2       over to the defense?

3   A   I don't recall that.

4   Q   Were you aware that Ryan Thao didn't even know who  
5       Chong Lee was and gave description that might match  
6       another individual and therefore the State would have  
7       a duty to disclose this to the defense because it was  
8       exculpatory?

9   A   I am not aware of that.

10   Q   Now you also participated with some interviews of  
11       individuals in Milwaukee after Chong Lee's arrest,  
12       correct?

13   A   Yes.

14   Q   Did you participate in the interview of Kong Vang,  
15       nicknamed Jesus, who worked at the Thai Kitchen?

16   A   Yes. I remember going to a restaurant there.

17   Q   Okay. And that was a short interview and it was  
18       recorded, correct?

19   A   I believe so.

20   Q   Okay. Did you participate in the interview of Xai --  
21       Xai, excuse me, X-A-I, Thao who also had some  
22       valuable information to give, correct?

23   A   I don't remember her specifically. Can you tell me  
24       where we interviewed her?

25   Q   It's a male.